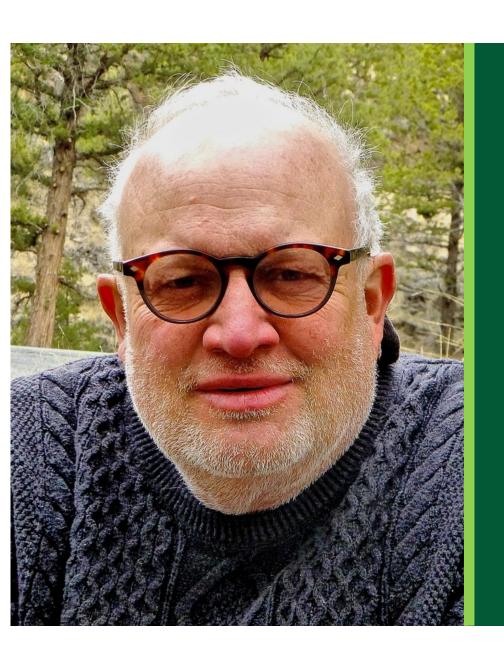
The Entry into Force of the Basel Ban Amendment: History and Implications

Jim Puckett, Founder / Director Basel Action Network

IPEN/BAN Webinar January 9, 2020, Seattle, WA







Jim Puckett



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Agenda



The Basel Convention

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Why Waste Moves 3

The
Basel Ban
Amendment

4

The Impacts of the Ban



The Basel Convention

on the Control of the Transboundary Movement of Hazardous Wastes and Their Disposal

- Adopted in 1989
- Entered into Force 1992
- Currently has 186 Parties (member countries)





BASEL CONVENTION

ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

PROTOCOL ON LIABILITY AND COMPENSATION

FOR DAMAGE RESULTING FROM TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

TEXTS AND ANNEXES





BAN has been a civil society watchdog of the Basel Convention since 1997

What Does Basel Do? Soft Law

- Calls for national self-sufficiency in waste management (Art. 4.2.b)
- Calls for minimizing all forms of transboundary movement of hazardous and other wastes (Art. 4.2.d)
- Calls for minimizing the generation of hazardous and other waste (Art. 4.2.a)
- Calls for ensuring environmentally sound management of that which is produced (Art. 4.8)

Defines "hazardous waste" and "other wastes" (Scope of Convention, Art. 1)

"Hazardous Waste":

- 1. According to Annexes (I,III and VIII)
- 2. Defined as such by National Law of a Country involved in trade scenario

"Other Waste" (Annex II, wastes for special consideration)

- 1. Wastes collected from households
- 2. Incinerator ash from incinerating household waste,
- 3. Certain plastic wastes (new addition COP14)

What Does
Basel Do?
-

Hard Law

Requires control of exports of "hazardous" and "other wastes"

Prior Informed Consent (PIC) (default)

- 1. Defines PIC procedure (Art. 6)
- 2. Defines illegal traffic (criminal) (Art. 9)

Prohibitions

- 1. Countries may ban imports on a national basis. (Art. 4.1)
- 2. Ban on exports to Antarctica (Art. 4.6)
- 3. Ban on trade between Parties and non-Parties unless there is a special "Article 11" agreement (Art. 4.5, Art. 11)
- 4. Basel Ban Amendment (Art. 4a)

What Does Basel Do?

Hard Law



186 Parties out of 193 UN members. Just 6 UN countries not Parties: East Timor, Grenada, Haiti, San Marino, South Sudan, Tuvalu, and the **USA**.



Why Waste Moves (Cost Externalization)

The history of pollution is one of "cost externalization"







COST EXTERNALIZATION

What is It?

Is a market distortion that occurs when an action by an actor, damages others or nature, resulting in a cost that is not paid for by that actor, either to prevent damage in the first place, or to compensate for it later.

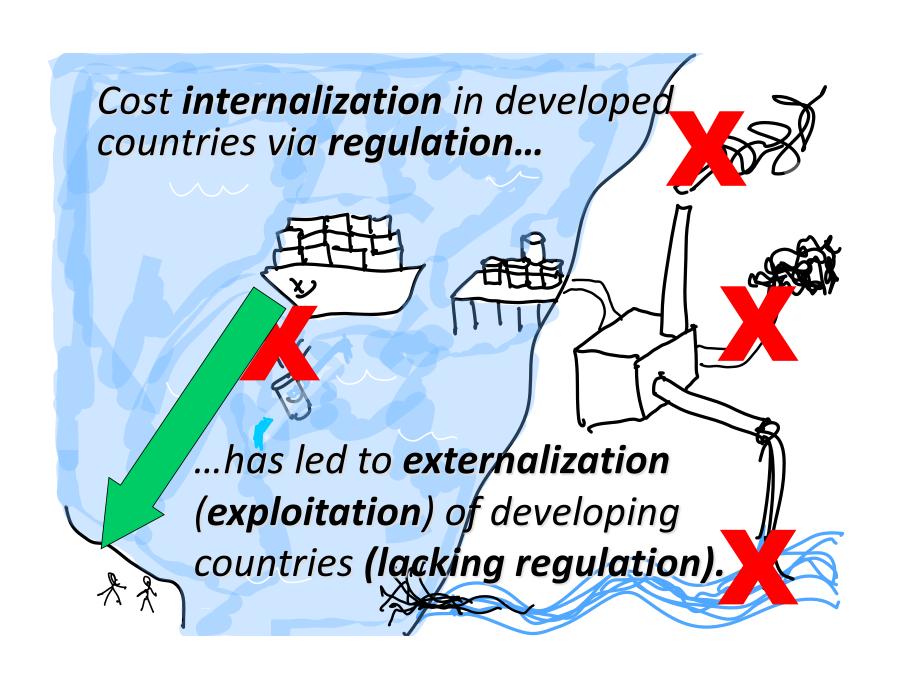
COST EXTERNALIZATION Throughout history those that extract resources, use resources, and harness technology seldom have had to pay or charge the entirety of the true costs, that include costs for damage done to others.



COSTS EXTERNALIZED







E-Waste Trade \rightarrow Africa and Asia







Pollution and labor abuse follow a path of greatest opportunity for cost externalization.



THE WORLD BANK/IFC/MIGA

OFFICE MEMORANDUM

DATE: December 12, 1991

TO: Distribution

FROM: Lawrence H. Summers

EXTENSION: 33774

SUBJEÇT: GEI

After extensive discussions with Lant on the cu of the GEP '92 outline I would like to add to my suggestion immediate follow-up in my memo of December 10, the following chapter by chapter comments on the outline. Also following specific suggestions for data analysis I think will be usef report.

Chapter 1

1.a As mentioned in a footnote, 1950 is a particula year for such comparisons as German and Japanese trade was exogenous reasons. The overall openness of the US and Japanese is not much higher now than at the turn of the ce

1.a Footnote two mentions that Taiwan, Singapore, a are high income countries. Does this make them "industrial If so, it seems odd that industrial country share fell.

1,a I thought it interesting that you mention that Asian economies are more diversified as a recent IMF report that by the conventional export diversification measures Kd roughly the same as the 1960;5. How are you measuring dive

1.b. How are you defining "high technology" products understanding of the commonly used US depthof Commerce defithat is relies on R&O intensity. This of course needn't be



I think the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable and we should face up to that.

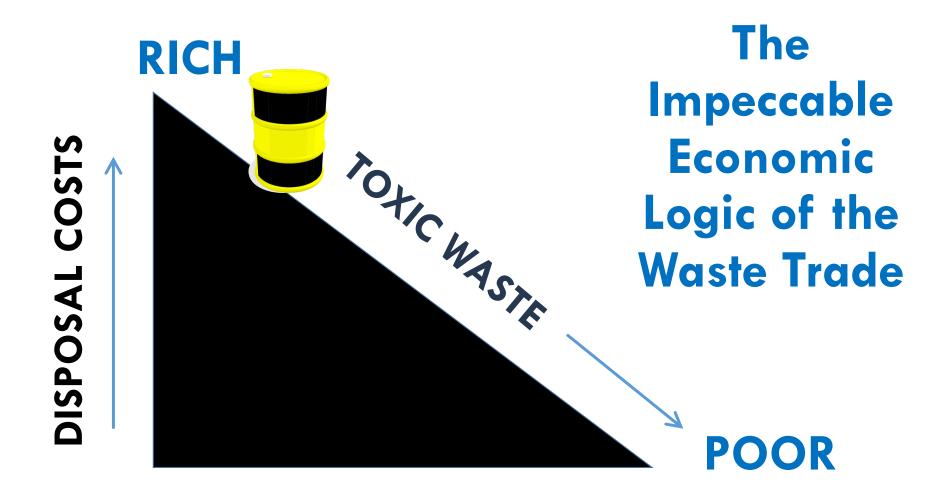
-- Lawrence Summers, 1991

I've always thought that under-populated countries in Africa are vastly underpolluted.

-- Lawrence Summers, 1991

"Your reasoning is perfectly logical but totally insane...your thoughts provide a concrete example of the unbelievable alienation, reductionist thinking, social ruthlessness and the arrogant ignorance of many conventional 'economists' concerning the nature of the world we live in...

⁻⁻ Jose Lutzenburger, Brazilian Sec. of Environment, 1992.





Basel Ban Amendment

- Adopted at COP3 (1995)
- Entered into Force December 5, 2019
- Currently has 98 Parties (member countries)

• 1980s Epidemic of Waste Trade Events (1984-1990)

History of the Basel Ban



KOKO BEACH, NIGERIA 1987

The Saga of the Karin B.

Europe's Failing Effort To Exile Toxic Trash

By STEVEN GREENHOUSE

N the town of Manfredonia on Italy's Adriatic coast, recently, there was a general strike and the city council resigned en masse to protest the Italian Government's efforts to get the port to accept the Deep Sea Carrier, a ship hauling more than 2,000 tons of toxic waste back to Italy from Koko, Nigeria. The week before, the Karin B., carrying 2,100 tons of toxic waste from the same Nigerian landfill, finally received permission to land in Livorno, Italy, ending a nine-week odyssey during which six European countries refused to let it dock.

Western Europe produces about 22 million tons of hazardous waste, or about 120 pounds per person, each year. Disposing of that waste has become increasingly difficult. Just as in the United States, waste disposal in Western Europe has grown more expensive as landfills filled up. New landfills have been hard to build because land is scarce and opposition from environmentalists is strong. In addition, many European nations have strict rules requiring that dangerous chemicals such as PCB's undergo high-temperature incineration, a disposal method that has become increasingly expensive.

As a result, many Western European com-

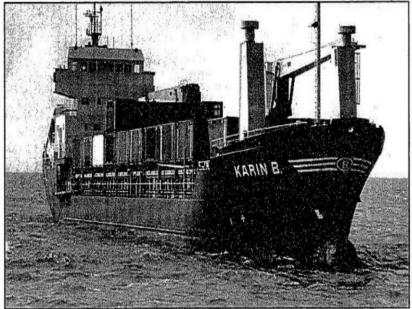
to dispose of the waste are shadowy operators who look for low-cost, often unsafe ways to discard the chemicals. That is apparently what happened to the toxic waste carried back to Italy by the Karin B., the ship that finally docked at Livorno. The waste, which is believed to have originated in three or four European countries, was sent in several shipments this year and last to a small landfill in Koko, a remote Nigerian village.

Only after environmental groups and Nigerian officials protested the dumping did the Italian Government order that the toxic waste be picked up and that a suitable way to dispose of it be found in Europe. Italy is responsible for the waste under a rule adopted by the Organization for Economic Cooperation, an association of 24 industrial nations, that holds the originating nation responsible for waste that is disposed of improperly.

A Proper Burial

Spain, Britain, France, West Germany, the Netherlands and Belgium all rejected the first shipment of toxic waste returned aboard the Karin B., saying they were unsure whether their treatment plants could dispose of the cargo properly because no one knew its

The European Community has adopted a directive that calls on the 12 member nations to allow toxic waste to be exported from their panies have been exporting their waste to countries only after determining that the re-

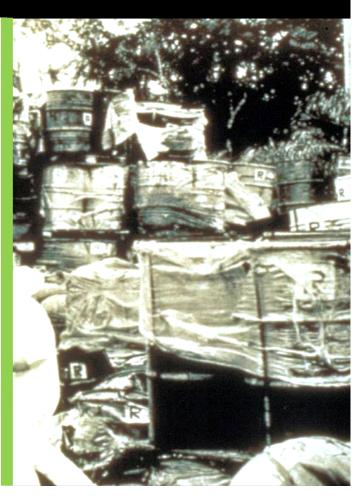


Europe's garbage barge: The Karin B. carrying toxic waste back to Italy from Nigeria.

been approved by Italy, the scandal might have been avoided because the Italians would have had to check with the Nigerians to make sure the waste would be disposed of properly. Because of the embarrassment

and Sweden, for example, have banned pen-Many nations have gone further than the European Community, which is developing a tachlorophenol, a wood preservative that multibillion-dollar plan to clean up waste contains dioxin, while several nations have sites. Austria, Switzerland and the Netheroutlawed the manufacture of PCB's. lands require producers of toxic waste to

Environmentalists hail these measures, register and declare the types and quantities saying that banning dangerous materials is



The New York Times

SUNDAY, MAY 3, 1987

SUNDAY, MAY 3, 1987

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Garbage Odyssey Proves Embarrassing

LONGISH

ONG ISLAND'S pariah garbage barge gathered more than just flies last week as it meandered through the

The Mexican Navy was alerted and The Mexican Navy was alerted and ordered to keep the barge away from the country's ports. Following the lead of officials in North Carolina and lead of the lead o

roughout the nation.
Meanwhile, Frank R. Jones, the meanwhile, Frank R. Jones, the new Islip Town Supervisor, publicly admitted that his town was embar-rassed. "We are decent folk who want to solve our own problems," he said.

some public officials, nowever, were angered by that comment, say-ing that the blame for the plight of the garbage can be directly attributed to widespread public apathy about trash and an equally prevalent unwilling-ness by public officials to tackle the

solid-waste problem.

Apparently, they said, it has taken the hugely embarrassing event — "Islip's garbage has become the laughingstock of the Eastern Seaboard," Mr. Jones Jamented — to draw widespread attention to a problem that has existed for years without

iem that has existed for years without attracting much concern.

Now, officials said, maybe Long Is-land residents and the elected offi-cials who represent them will finally realize that Nassau and Suffolk Coun-ties have a crisis because of the 9,000

ties have a crisis because of the 9,000 tons of trash generated each day.

"We have a serious problem," said Gordon M. Boyd, the executive director of the New York State Legislative ment. "And the irresponsibility with which some people approach the problem — e.g., barging it to nowhere — should no hide the fact that garbage disposal is a serious problem." An actionally officials with deal and the day of the grant garbage are set the country also saw

the barge as a public relations bo-nanza for themselves. For as it drew headlines in newspapers everywhere, the barge also became a symbol for an emerging national solid-waste

crisis.
Although the problem is most acute
in the Northeast, Federal Environmental Protection Agency officials
said that a recent survey conducted
for them by the Association of State
and Territorial Solid Waste Management Officials found that at least 27
states were facing severe landing
problems in the next three to 10

years.

Nowhere, perhaps, are problems as severe as on Long Island, where the State Department of Environmental

State Department of Environmental Conservation, acting under the authority of legislation approved in 1983, is insisting that all andfills be 1983, in the state of the control of the con

"It is very difficult under the law to get permission to expand any landfill," he said. "They have to meet the feasibility tests to see if any other

Islip's problem points up lack of solution for complex issue.

possibilities are available.

It was that law that started the chain of events that have led to the current problem of a barge full of Islip's business garbage floating around the Gulf of Mexico. In a more of trash really began in November of lat year, when the lish Town Board voted to bar all commercial garbage from its 75-acre landfill in Haup-

pauge.
Although the Hauppauge landfill is almost full, the Department of Environmental Conservation has refused romental Conservation has refused togive the town permission to expand it while Islip constructs two incinera-tion plants. Several courts have agreed with the department, leading

to the November decision by the Town Board.
Since then, commercial carters have been collecting the business gar-bage generated in Islip at much-in-flated costs. Several business people fated costs. Several business people their garbage costs have in some cases tripled or quadrupled since the board's decision. Islip officials, of course, have blanned the Department of Environ-barge situation by being intranspent

mental Conservation for causing the barge situation by being intransigent and not allowing the town to expand the dump. The department has re-sponsible in not putting together a vi-able alternative plan sooner. "I've realized we've been ap-

aute alternative plan sooner.
"Tve realized we've been approaching a crisis for many years," said Harold D. Berger, the Long Island regional director of the department. "Some other people have not realized it — they only do things when in crisis."

Whoever is to blame — and that whoever is to blame — and that will be the focus of debate for menths to come — the problem last week was that a barge stuffed with Islip's garbage was floating somewhere in the Gulf of Mexico, reportedly at a cost of at least \$6,000 a day.

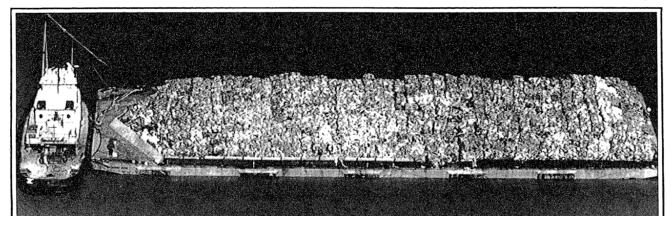
The garbage left the Island when the tugboat Break of Dawn pulled away from its berth in Leng Island City, Queens, on March 22. The tug and its load were bound for Morehead City, N.C., where the owner of the garbage, Lowell Harrelson, planned to place it in a landfill and use it to produce methane gas.

The plans soon went awry as officials in Morehead City Obtained court orders barring the barge from dock with the control of the control

lasted more than a month.

After being banned from Morehead
City, Mr. Harreison directed the
barge to a suburb of New Orleans.
But Louisiana officials, afraid that But Louisiana officials, afraid that the garbage contained toxic materi-als, were even more vehement in their opposition to the barge. Only half in jest, Gov. Edwin W. Edwards threatened to line the banks of the



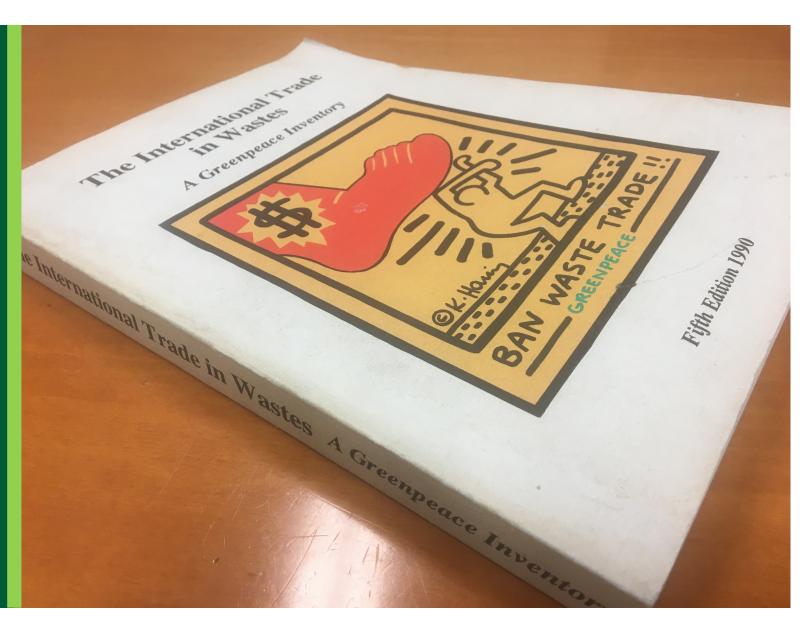


History of the Basel Ban

- 1980s Epidemic of Waste Trade Events (1984-1990)
- Greenpeace Chronicles and Targets Incidents (1987-1994)

GREENPEACE

WASTE TRADE INVENTORY 1990



History of the Basel Ban

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History of the Basel Ban

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hung in 1989 at Treaty **Adoption**

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 - Regional Agreements Formed (1991-1996)

Regional Waste Trade Treaties Established

Name	Geographic Scope	Adoption Date	Entry Into Force
Central American Agreement	Central America	1992	1992
Bamako Convention	Africa	1991	1998
Waigani Treaty	South Pacific Forum Parties	1995	2001
Izmir Protocol	Barcelona Convention Parties (Mediterranean)	1996	2008

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 - Basel Meeting Adopts First Ban as a Decision (II/12) (1994)

ROGRAMME OF THE CONFERENCE OF THE THE BASEL CONVENTION ON THE TRANSBOUNDARY MOVEMENTS OF WASTES AND THEIR DISPOSAL proposal presented by the Group of 77 and China hat transboundary movements of hazardous wastes from OECD to non-order do not constitute and hazardous wastes from OECD to n do not constitute environmentally sound management as required by mmediately all transboundary movements of hazardou convention;

Text of
Original Ban
Proposal in
1994, later
that meeting
gaining
support from
the EU

History of the Basel Ban

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 - Decision to Amend Convention (III/1) (1995)
 - Many efforts by JUSCANZ countries to undo, weaken / delay entry into force (1996-2010)

Notable Efforts by JUSCANZ to Undermine the Ban

Tactic	When	Outcome
Declare that Decisions (e.g. II/12) are not legally binding	1994	An Amendment (III/1) was proposed and Passed in 1995
Argument advanced that Article 11 agreements could be used to circumvent the Ban.	1995- 1996	Some Parties strongly disagreed and EU lodged legal opinion as to why this was impossible.
Attempt to add new countries (e.g. Slovenia, Monaco, Israel) to Annex VII to water down the effect and make it tantamount to an opt in/opt out ban.	1996- 1997	COP4 compromised: No changes in Annex VII until entry into force, but a study of Annex VII could commence. The study lasted years but was finally terminated by the Parties without conclusion.

Notable Efforts by JUSCANZ to Undermine the Ban

Tactic	When	Outcome
Lobbied key countries in Southeast Asia, Africa, Latin America urging them to not Ratify.	1994- 2012	Many countries never ratified the Ban Amendment despite it being advantageous for their public and environmental health. This slowed the entry into force.
Declaring that the Convention text (Art. 17) regarding amendments was ambiguous and could mean that 3/4 of Parties now rather that at time of adoption was required for entry into force.	2007-2011	Switzerland and Indonesia convened Country Led Initiative (CLI) to resolve Amendment debate and address concerns of some re: the ban. As a result, in COP10 (2011) an omnibus decision was passed to allow early entry into force of the ban as well as many projects on ESM and Legal Clarity.

History of the Basel Ban

- 1980s Epidemic of Waste Trade Events (1984-1990)
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- December 5, 2019 Enters into Force!

Entered into Force December 5, 2019



Diplomatic community in Geneva marks the entry into force of the Basel Convention's Ban Amendment

Watch live the special event in the UN Palais des Nations, which brings together many of the Convention's 187 Parties to celebrate the strengthening of efforts for implementing this global, legally-binding, international agreement on waste.

• It fulfills the original promise of the Convention and changes its text forever.

 It adds a new preambular paragraph:

"Recognizing that transboundary movements of hazardous wastes, especially to developing countries, have a high risk of not constituting an environmentally sound management of hazardous wastes as required by this Convention."

What Does
the
Basel Ban
Do?

It creates a new Annex VII (developed countries) consisting of Members of the European Union (EU), the Organization for Economic Cooperation and Development (OECD), and Liechtenstein.

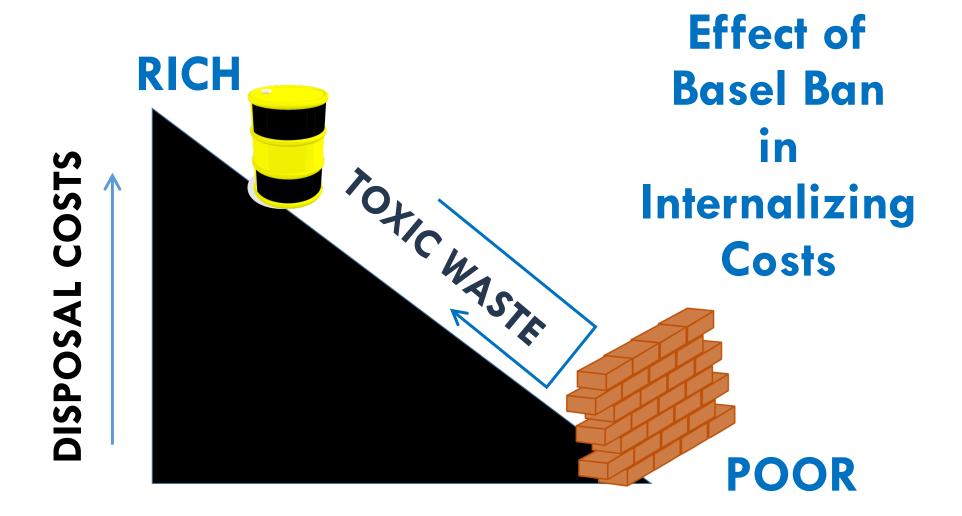
• It adds a new Article (4a) which prohibits the export of hazardous wastes as defined by the annexes of the Convention from Annex VII countries to non-Annex VII countries for any reason.

What Does the Basel Ban Do? Technically, while it only directly applies to those Parties that have ratified it, another part of the Convention requires that all Basel Parties must respect the prohibitions of other Parties. Thus, Annex VII Parties that have not ratified must respect the Basel Ban ratifications of the

non-Annex VII countries that have

What Does the Basel Ban Do?

For example, Canada (not having ratified) cannot export to Indonesia (which has).



What Does the Basel Ban <u>not</u> Do?

- Does not prohibit trade from non-Annex VII countries to any other countries
- Does not prohibit trade between Annex VII countries.
- It does not include "Other Wastes"
 (Annex II) (ie. some plastic wastes,
 household wastes and incincerator
 ashes from burning household wastes.

- Currently 98 out of 187 Basel Parties have ratified.
- Of the 41 Annex VII countries (EU, OECD, Liechtenstein) 35 already implemented it.
- When the US finally ratifies the Convention they will have to accept the BAN they have always opposed.
- While the Ban was adopted by consensus, the JUSCANZ group of industrialized countries, continues to oppose it. The group includes: Japan, US, South Korea, Canada, Australia, New Zealand.

Facts About the Basel Ban

The 41 Developed **Countries** to which the Basel Ban **Applies** (Annex 7)

Implem Ratified	Implementing Convention Only (5)	
Austria	Liechtenstein	Australia
Belgium	Lithuania	Canada
Bulgaria	Luxembourg	Japan
Chile	Malta	New Zealand
Cyprus	Mexico	South Korea
Czech Republic	Netherlands	
Denmark	Norway	
Estonia	Poland	
Finland	Portugal	
France	Romania	
Germany	Slovak Republic	
Greece	Slovenia	
Hungary	Spain	
Iceland	Sweden	
Ireland	Switzerland	
Israel	Turkey	
Italy	United Kingdom	Neither (1)
Latvia		United States



Impacts of the Amendment's Entry into Force

- The JUSCANZ countries look increasingly out of step with the rest of the world. Pressure is now on them to accept the entire Convention.
- Increasingly all exports of hazardous and other wastes (including plastic waste) to developing countries will be viewed as a unacceptable, regardless of ratifications.
- All countries will be under increasing pressure to properly enforce the Ban.
- Non-Annex VII countries that have not ratified, will now be more inclined to ignore the JUSCANZ lobby and ratify.

What Changes
Now Due to
the Ban Entry
into
Force?

• **Downstream Impacts** -- Protects environment and peoples in developing countries from pollution

and exposure

 Upstream Impacts – Provides strong new economic and legal incentive for implementing waste prevention/green design at source

Environmental Gains

Major Victory for Global Environmental
 Justice — Stating that environmental considerations are more important than free trade. And cost externalization will not be tolerated.

But

• • •

Some Still Seeking Exemptions ---Shipping Industry





Still
Seeking
Exemptions

IT Industry

Remaining Efforts by Industry to Undermine the Ban/Basel

Tactic	Who	When	Outcome
Declare that Ships are not Waste and thus should not be regulated under Basel Convention.	Shipping Industry, EU and Shipping Powers (Norway, Japan)	1994	Basel Parties did not agree that ships are not wastes but industry adopted a weaker Convention (Hong Kong, not in force) for ship recycling with no prohibition against moving toxic ships to Asia. EU ignored their Basel obligations and exempted ships from their waste shipment regulation.
Argue that broken electronic equip-ment going for repair is not waste.	Computer Industry, ITI, EU	1995- 1996	Succeeded so far in perpetuating this view in a provisionally adopted guideline. Many Parties are not happy with this but the EU/JUSCANZ

Parties that have Ratified

- -- Ensure that you have implemented the Ban into national legislation.
- -- Provide the necessary training to customs and border agents for enforcement.
- -- Consider doing what the EU has done and add Annex II wastes to the Ban.

Parties that have yet to Ratify (89 Parties)

-- Ratify at the earliest opportunity. One can no longer claim they have ratified the Convention in full if the Ban is neglected.

Follow-up Needed Now

All Parties to the Basel Convention

- -- Oppose efforts to weaken the Ban and the Basel Convention by the Electronics Industry.
- -- Support BAN's revised e-Waste Guideline at Basel.

Civil Society/Citizens

- -- Press your government to ratify the Ban Amendment if it has not yet done so.
- -- Ensure they have implemented the Ban into national legislation if they have.

Follow-up Needed Now



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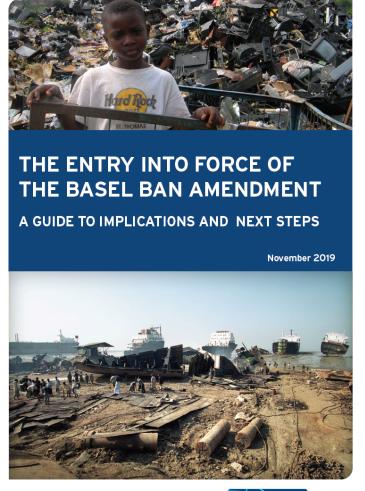
Depositary

Status of Treaties

Current List of Basel Ban Ratifications

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREA TY&mtdsg_no=XXVII-3-a&chapter=27&clang=_en

deposited with the Depositary. Amendments adopted in accordance with paragraphs 3 or 4 [of article 17 of the Convention] shall enter into force between Parties having accepted them on the ninetieth day after the receipt by the Depositary of their instrument of ratification, approval, formal confirmation or acceptance by at least three-fourths of the Parties who accepted them or by at least two thirds of the Parties to the protocol concerned who accepted them, except as may



New in-depth Guide to the Basel Ban available on BAN and IPEN websites

> www.ban.org www.ipen.org







